

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 18338 of 2007(G)

OS.161/1999 of MUNSIF COURT,KATTAPPANA
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PETITIONER:

LAJU BHASKARAN, S/O.KELAN BHASKARAN,
NELLITHANATH (H), VELLAYANKUDY (P.O),
KATTAPPANA VILLAGE, UDUMPANCHOLA TALUK.

BY ADV. SRI.A.C.DEVASSIA
SRI.T.J.MICHAEL

RESPONDENTS:

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1. THE FEDERAL BANK LTD., THOPPIPALA BRANCH
REPRESENTED BY BRANCH MANAGER.
 2. N.M.ABRAHAM, S/O.MATHEW, NJARACKAL (H),
UPPUTHARA (P.O), TEACHER ST.GEORGES
HIGH SCHOOL, KATTAPPANA (P.O).
 3. PHILOMINA OUSEPH, PUTTANPURAKAL (H),
UPPUTHARA TEACHER, ST.PHILOMINA HIGH SCHOOL,
UPPUTHARA (P.O), PEERUMEDU THALUK.

R1 BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)
R3 BY ADV SRI.T.A.UNNIKRISHNAN
SRI.P.P.BIJU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: TRUE COPY OF EXECUTION PETITION IN E.P.38/03 IN O.S.161/99 DT.29.10.03

EXT.P2: CERTIFIED COPY OF ORDER IN E.P. 38/03 IN O.S.161/99 OF MUNSIFF'S COURT,
KATTAPPANA DT. 15.3.07

jj

/TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 18338 OF 2007 G

Dated this the 16th July, 2007.

JUDGMENT

This writ petition is filed against the order of the Munsiff, Kattappana in E.P.38/03 in O.S.161/99. The decree holder has obtained a decree against all the respondents of which the present writ petitioner is the principal debtor. The court below found that he was a driver of the Co-operative Bank having a daily income of Rs.200/- and that he has got 2 acres of non-patta land out of which he was deriving an income of Rs.25,000/- per annum. The decree holder had let in evidence and against the same the principal judgment debtor also tendered evidence. P.W.2 is examined to prove that the writ petitioner was working as a temporary driver and had deposed that he was in their service from 1.5.2003 to 30.4.2004. The court below found that since he is a driver having a heavy licence his version that he is not having any means cannot be accepted and therefore proceed to order warrant. I am afraid that such an approach may not be correct to detain a person in civil prison. The court has to satisfy its conscience that he has means to pay and he is deliberately avoiding payment. It is also submitted that there is a likelihood of settling the matter as well. So, I feel the only course

that can be adopted is to set aside the order and permit the decree holder as well as the respondent to adduce evidence in support of their respective contentions and in the meanwhile to attempt to settle the matter for a reasonable amount so that the claim of the parties can be settled. Respondents 2 and 3 can also persuade the principal debtor to wipe off the liability so that unnecessary hardship can be avoided. Parties are directed to appear before the court below on 7.8.2007. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge